IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3572 OF 2003

Shri.Kisan Namdao Pote .. Petitioner
V/s
The Chief Officer, Khopoli Municipal
Council, Khopoli & Ors. .. Respondents

Mr.S.G.Kudle for the Petitioner.
Mr.G.R.Agrawal h/f Mr.R.M.Agrawal for Respondent No.1.
Mr.C.R.Sonawane, AGP for Respondent Nos.2 & 3.

CORAM : B.H.MARLAPALLE & NARESH H.PATIL,JJ.
DATE : 25th September, 2006.

P.C.:

1. Heard Mr.Kudale the learned Counsel for the Petitioner. He claims that the Respondent Municipal Council is proceeding to auction his individual property located in Ashtavinayak Co-op.Housing Society, Chinchawali Shekin, Taluka Khalapur, District Raigad on the alleged ground of non payment of taxes in response to the bills issued under Section 151 of the Municipalities Act. He has therefore challenged the order dated 19.5.2003 issued by the Chief Officer of the Khopoli Municipal Council, Khopoli.

2. The Municipal Council has filed affidavit in reply and pointed out that all the property covered by the impugned order belongs to Ashtavinayak Griha Nirman Sanstha and a sum of Rs.1,26,989/- is due towards the taxes till March, 2002, and since the Block No.5 was found to be vacant it was sought to be attached so as to cause least inconvenience to the members of the Society. It appears that the said Block No.5 is claimed to be the

property of the Petitioner. The Petitioner had also submitted the letter dated 8.8.2000 after the property was sought to be attached on 7.4.2000 after service of the bill. The said affidavit also alleges that the petitioner is holding more than one blocks/flats in his name and this has been refuted by the petitioner in his rejoinder. The Municipal Council admits to have received an amount of Rs.10,000/- from the petitioner, but it claims that, that payment itself will not come in the way of the Municipal Council in attaching the Society's property so as to recover the above stated amount of arrears of taxes.

3. The Assistant Registrar, Co-operative Societies, Khalapur has also filed affidavitn in reply and has stated that by an order dated 4.8.1997 the Managing Committee of the said Society was removed and Mr.B.K.Dalvi was appointed as an Administrator. Mr.Dalvi could not take charge and subsequently Smt.M.N.Nalawade was appointed as an Administrator, but she also could not take charge, and in view of the pendency of this petition as well as Writ Petition No.6281 of 2001 the matter being sub-judiced, the order removing the Managing Committee and appointing the Administrator could not be implemented.

4. It is therefore clear that this petition involves disputed questions of facts which cannot be gone into by us. The appropriate remedy for the petitioner would be

either to file an appeal as provided under the Municipalities Act challenging the tax bills, or in the alternative file a civil suit for declaration and perpetual injunction. Petition is therefore disposed off by relegating the Petitioner to the alternative remedy as aforesaid.

5. Protection granted by this Court will be operative for a further period of four weeks from today, so that the petitioner can be relegated to the alternative remedy.

(NARESH H.PATIL,J.) **(B.H.MARLAPALLE, J.)**